

THE TEXAS COMPANY (PHIL.), INC., PETITIONER, VS. TOMAS ALONSO, RESPONDENT.

G.R. No. 47495. August 14, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

On November 5, 1935 Leonor S. Bantug and Tomas Alonso were sued by the Texas Company (P. I.), Inc. in the Court of First Instance of Cebu for the recovery of the sum of P629, unpaid balance of the account of Leonor S. Bantug in connection with her agency contract with the Texas Company for the faithful performance of which Tomas Alonso signed the following:

"For value received, we jointly and severally do hereby bind ourselves and each of us, in solidum, with Leonor S. Bantug the agent named in the within and foregoing agreement, for full and complete performance of same hereby waiving notice of non-performance by or demand upon said agent, and consent to any and all extensions of time for performance. Liability under this undertaking, however, shall not exceed the sum of P2,000, Philippine currency."

"Witness the hand and seal of the undersigned affixed in the presence of two witnesses, this 12th day of August, 1929."

Leonor S. Bantug was declared in default as a result of her failure to appear or answer, but Tomas Alonso filed an answer setting up a general denial and the special defenses that Leonor S. Bantug made him believe that he was merely a co-security of one Vicente Palanca and that he was never notified of the acceptance of his bond by the Texas Company. After trial, the Court of First Instance of Cebu rendered judgment on July 10, 1937, which was amended on February 1, 1938, sentencing Leonor S. Bantug and Tomas Alonso to pay jointly and severally to the Texas Company the sum of P629, with interest at the rate of six per cent (6%) from the date of the filing of the complaint, and with proportional costs. Upon appeal by Tomas Alonso, the Court of Appeals modified the judgment of the Court of First Instance of Cebu in the sense that Leonor S. Bantug was held solely liable for the payment of the aforesaid sum of P629 to the Texas Company, with the consequent absolution of Tomas Alonso. This case is now before us on petition for review by certiorari of the decision of the Court of Appeals. It is contended by the petitioner that the Court of Appeals erred in holding that there was merely an offer of guaranty on the part of the respondent, Tomas Alonso, and that the latter cannot be held liable thereunder because he was never notified by the Texas Company of its acceptance.

The Court of Appeals has placed reliance upon our decision in *National Bank vs. Garcia* (47 Phil., 662), while the petitioner invokes the case of *National Bank vs. Escueta*, (50 Phil., 991). In the first case, it was held that there was merely an offer to give bond and, as there was no acceptance of the offer, this court refused to give effect to the bond. In the second case, the sureties were held liable under their surety agreement which was found to have been accepted by the creditor, and it was therein ruled that an acceptance need not always be express or in writing. For the purposes of this decision, it is not indispensable for us to invoke one or the other case above cited. The Court of Appeals found as a fact, and this is conclusive in this instance, that the bond in question was executed at

the request of the petitioner by virtue of the following clause of the agency contract:

"Additional Security.—The Agent shall whenever requested by the Company in addition to the guaranty herewith provided, furnish further guaranty or bond, conditioned upon the Agent's faithful performance of this contract, in such form and amount and with such bank as surety or with such individuals or firms as joint and several sureties as shall be satisfactory to the Company."

In view of the foregoing clause which should be the law between the parties, it is obvious that, before a bond is accepted by the petitioner, it has to be in such form and amount and with such sureties as shall be satisfactory thereto; in other words, the bond is subject to petitioner's approval. The logical implication arising from this requirement is that, if the petitioner is satisfied with any such bond, notice of its acceptance or approval should necessarily be given to the proper party in interest, namely, the surety or guarantor. In this connection, we are likewise bound by the finding of the Court of Appeals that there is no evidence in this case tending to show that the respondent, Tomas Alonso, ever had knowledge of any act on the part of the petitioner amounting to an implied acceptance, so as to justify the application of our decision in *National Bank vs. Escueta* (50 Phil., 991).

While unnecessary to this decision, we choose to add a few words explanatory of the rule regarding the necessity of acceptance in case of bonds. Where there is merely an offer of, or proposition for, a guaranty, or merely a conditional guaranty in the sense that it requires action by the creditor before the obligation becomes fixed, it does not become a binding obligation until it is accepted and, unless there is a waiver of notice, until notice of such acceptance is given to, or acquired by, the guarantor, or until he has notice or knowledge that the creditor has performed the conditions and intends to act upon the guaranty. (*National Bank vs. Garcia*, 47 Phil., 662; 28 C. J., sec. 21, p. 901; 24 Am. Jur., sec. 37, p. 899.) The acceptance need not necessarily be express or in writing, but may be indicated by acts amounting to acceptance. (*National Bank vs. Escueta*, 50 Phil., 991.) Where, upon the other hand, the transaction is not merely an offer of guaranty but amounts to a direct or unconditional promise of guaranty, unless notice of acceptance is made a condition of the guaranty, all that is necessary to make the promise binding is that the promisee should act upon it, and notice of acceptance is not necessary (28 C. J., sec. 25, p. 904; 24 Am. Jur., sec. 37, p. 899), the reason being that the contract of guaranty is unilateral (*Visayan Surety and Insurance Corporation vs. Laperal*, G. R. No. 46515, promulgated June 14, 1940).

The decision appealed from will be, as the same is hereby, affirmed, with costs of this instance against the petitioner. So ordered.

Avanceña, C. J., Abad Santos, and Diaz, JJ., concur.

OZAETA, J., with whom concur MORAN and HORRILLEN, JJ., dissenting:

We concede that a statement of fact made by the Court of Appeals is conclusive upon this Court in a petition for review on certiorari. But when it appears from the decision of the Court of Appeals itself that such a statement is but a conclusion drawn by that Court from the facts found by it, and that such conclusion is patently erroneous, we hold that this Court should disregard it.

Of that nature, we believe, is the following statement made by the Court of Appeals in the course of its ratiocination :

"La fianza prestada por el apelante se otorgo a requerimiento de la demandante en virtud de la siguiente clausula (15) del contrato de agencia Exhibit A, que dice asi:

" 'ADDITIONAL SECURITY.—The Agent shall, whenever requested by the Company in addition to the guaranty herewith provided, furnish further guaranty or bond, conditioned upon the agent's faithful

performance of this contract, in such form and amount and with such bank as surety or with such individuals or firms as joint and several sureties as shall be satisfactory to the Company.' " (Pages 8-9, appendix to petitioner's brief.)

It is important to note that the above-quoted statement forms part of the court's ratio decidendi and not of its findings of fact. Its findings of fact appear in the first three paragraphs of its decision, which we quote as follows:

"El 12 de agosto de 1929 la demandante y el demandado Leonor S. Bantug celebraron un contrato, (Exhibit A) por virtud del cual aquella nombro a este Agente vendedor de sus productos petroliferos en el Municipio de Maasin, Provincia de Leyte, mediante pago de una comision sobre el valor de todos los efectos que llegase a vender, obligandose por su parte Leonor S. Bantug como Agente, a ingresar y pagar a la compa ia el importe neto de las ventas realizadas, despues de deducir su comision y los demas gastos de agencia que se estipularon en el referido contrato.

"En el mismo documento Exhibit A, el otro demandado Tomas Alonso suscribio una fianza, obligandose mancomunada y solidariamente con el Agente Leonor S. Bantug a cumplir fielmente las condiciones del contrato de Agencia hasta la suma de P2,000.

"El estado de cuentas de la agencia que se presento en el juicio como Exhibit B, demuestra que la ultima liquidacion arroja un balance contra el Agente Leonor S. Bantug por la cantidad de P629; y como esta suma no ha sido pagada ni por Leonor S. Bantug ni por su fiador Tomas Alonso, a pesar de los requerimientos que se les ha hecho, de ahi que la demandante, el 18 de noviembre de 1938, dedujo accion en el Juzgado de Primera Instancia de Cebu para el cobro de dicha suma y sus intereses legales desde la presentacion de la demanda." (Pages 1-3, appendix to petitioner's brief.)

Now if, as found by the Court of Appeals itself, the agency contract between the petitioner and Leonor S. Bantug was Exhibit A, dated August 12, 1929, and that that very same document was on the same date signed by the respondent Tomas Alonso as bondsman or surety of the agent, how could the bond in question, which formed part of Exhibit A, be held to have been executed by virtue of clause 15 of said document providing for additional security? Indeed, that very clause says that the agent shall furnish further guaranty or bond "in addition to the guaranty herewith provided," whenever requested by the company. The "guaranty herewith provided" was obviously the bond or guaranty given by the respondent on the same date and in the same document. It appears clear to us, therefore, that the bond Exhibit A, being the original guaranty, could not be the "additional guaranty" mentioned in clause 15 of said Exhibit A. Moreover, it does not appear that any bond or guaranty, other than that of the respondent, to secure the performance of the agency contract in question was in force on and after August 12, 1929.

Another illogical conclusion drawn by the Court of Appeals is this:

"Por el requerimiento que contiene la clausula preinserta, de que el Agente puede prestar una garantia adicional a satisfaccion de la compa ia, debe entenderse que la fianza prestada por el apelante era una oferta o proposicion de garantia, cuya efectividad dependia de la aceptacion de la compa ia, comunicada al garante." (Page 9, appendix to petitioner's brief.)

If, as previously found by the Court of Appeals, the herein respondent executed the bond in question "a requerimiento de la demandante," how could said bond be understood as an "offer or proposition of guaranty" from Alonso to the plaintiff?

Yet the judgment of the Court of Appeals, as well as the affirming decision of the majority of this court, is based on the conclusion that the bond sued upon was an additional guaranty; that it constituted a mere offer of guaranty and, therefore, had to be accepted by the petitioner; and that, not having been accepted, it is inefficacious. We have shown that such conclusion is unwarranted.

Our vote is to reverse the decision of the Court of Appeals and to affirm that of Judge Felix Martinez of the Court of First Instance of Cebu, who tried this case.

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